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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JUL 12 2011

OFFICE: TEXAS SERVICE CENTER

FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a medical scientist at the [redacted] Salt Lake City. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In this decision, the term "prior counsel" shall refer to [redacted] who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

On appeal, the petitioner submits a brief from counsel and supporting evidence.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 1, 2009. In an accompanying statement, prior counsel stated that the petitioner "has a significant history of demonstrated achievements in medical

science, specifically in three [*sic*] areas: cerebrovascular diseases and hemodialysis vascular access occlusion."

Three letters accompanied the initial submission. [redacted] of Hong Kong, stated:

> [The petitioner] joined our stroke group as a postgraduate student and was actively involved in an excellent cerebrovascular disease program during her time there. [The petitioner's] research focused on occlusive cerebrovascular disease and ischemic cerebral infarction, the major type of stroke. . . . [The petitioner] made a breakthrough discovery: there is a significant relationship between the extent and severity of the occlusive cerebrovascular lesions and occurrence of stroke. . . .
>
> In addition, [the petitioner] also participated in a research project on a population-based study of the cerebral vasculature of rural Chinese peoples. . . . The research findings further affirmed that the condition of occlusive vascular lesions is of predictive value for future occurrence of stroke.
>
> . . . It is my opinion that [the petitioner's work will greatly benefit the field of neurology and will significantly contribute to the development of strategies for diagnosis and prevention of stroke.

[redacted] at Chicago, stated:

> I first came to know [the petitioner's] work through her original publications in premier journals and visited her stroke group in Hong Kong because we have similar interests in stroke research. . . . I would like to address [the petitioner's] exceptional research here to show you how significantly [the petitioner's] work contributed to stroke research and will benefit the national interests.
>
> . . . [The petitioner] joined the [redacted] of Hong Kong as an enthusiastic [redacted] in 1997 and was actively involved in an excellent cerebrovascular disease program during her time there. Her research mainly focused on the relationship between cerebrovascular diseases and stroke in relation to advances in transcranial Doppler (TCD) ultrasonography. . . . In order to predict and prevent stroke occurrence, [the petitioner] conducted TCD ultrasonography to detect cerebrovascular lesions in stroke patients, followed-up the progression or regression of those lesions and occurrence of recurrent strokes, and investigated the correlations between occlusive cerebrovascular diseases and first-ever or recurrent strokes. . . . Her research showed there were significant relationships between the extent and severity of occlusive cerebrovascular diseases and occurrence of recurrent stroke in stroke patients. This is an innovative finding of predictive and preventive value.

> Additionally, [the petitioner] participated in a research project . . . focused on detecting the prevalence of cerebrovascular occlusive disease in a non-stroke population and the existence of vascular risk factors. . . . [The petitioner's] findings affirmed that the more cerebrovascular lesions, the higher risk of occurrence of first-ever stroke in a non-stroke population. . . .
>
> All of the above indicate that [the petitioner] has made outstanding accomplishments and is internationally recognized in the complex and extremely difficult field of neurology and stroke.

When considering the above letters, the AAO cannot ignore that the petitioner is no longer performing research in the "field of neurology and stroke." The petitioner now works for a dialysis program, where the focus is on diseases of the kidney.

[redacted] stated:

> A well-functioning vascular access . . . is a crucial requirement for hemodialysis. Unfortunately, complications of the vascular access are common and contribute significantly to the morbidity of these patients. . . . In fact, 40 to 50% of hemodialysis grafts failed in the first year after they have been surgically placed, primarily as a result of stenosis and occlusion. Despite . . . its high prevalence, there are no established strategies to prevent hemodialysis vascular access stenosis. . . .
>
> The animal model with arteriovenous graft placement is absolutely crucial for this project. As the primary surgeon, [the petitioner] is in charge of animal surgeries. She also directs the administration of test drugs to prevent the vascular stenosis. . . . After the experimental approach has proven to be successful in animals, pilot clinical studies will be planned.
>
> Another related project in which [the petitioner] also makes significant contributions is the examination of the role of soluble epoxide hydrolase in the prevention of hemodialysis graft stenosis. If this role can be established, a logical next step will be the employment of inhibitors of this enzyme to prevent stenosis. . . .
>
> In addition, [the petitioner] is actively pursuing in vitro research studies. . . . Last year, [the petitioner] investigated the effects of an immunosuppressive agent on the proliferation of vascular smooth muscle cells, an important step in the pathogenesis of hemodialysis access stenosis. . . . At present, [the petitioner] is studying the potential role of carbamylated low-density lipoprotein in failure of hemodialysis vascular access.

[redacted] expressed "high expectations" regarding the petitioner's "exciting and promising research projects," but offered little information about the finished results that the petitioner's work at [redacted] had already produced. The goals of the petitioner's research speak to the intrinsic merit of the work, but simply working toward such unrealized goals does not inherently qualify the petitioner for the national interest waiver. *See Matter of New York State Dept. of Transportation*, I&N Dec. 215.

Prior counsel stated that the petitioner "has published eleven research papers in some of the top journals of her field," with "a total of 272 independent citations to her published research. . . . The sheer [number] of citations to [the petitioner's] published work is a clear indicator of the significant and foundational impact she has had on the field of medical science as a whole."

The petitioner submitted the cover pages from her articles, as well as printouts from [redacted] showing an aggregate total of 272 citations for six of her articles. The three most-cited articles have, respectively, 54, 87 and 104 citations. The "272" figure is for all of the citations (self-citations included), not just independent citations as counsel claimed, but nevertheless the evidence shows very heavy citation of the petitioner's published work.

All of the published articles in the record derive from the petitioner's former neurological research into circulatory disorders of the brain, not from her current work at the [redacted]. The petitioner has worked at [redacted] since 2006, but the initial submission did not show that her years of work had thus far produced any published results.

The petitioner did not explain the connection between her past work with stroke, which appeared in neurological journals, and her current work. The letters from neurologists did not mention her dialysis work. Her current supervisor's letter briefly mentioned her earlier neurological work, but did not explain how it relates to her current work apart from stating that the beneficiary's experience with "vascular imaging techniques" prepared her to work in [redacted] aboratory.

On February 3, 2010, the director requested additional evidence to show that the petitioner qualifies for the waiver. In response, counsel asserted that "as of February 23, 2010, Petitioner's citation count had risen to 413 independent citations. . . . This represents an increase of 141 citations since the priority date." Updated [redacted] printouts corroborate these figures. Counsel claimed: "Petitioner is conducting seminal research into stroke and kidney disease," but the record contains no evidence that the petitioner continues to perform stroke-related research.

The director denied the petition on March 4, 2010, acknowledging the intrinsic merit and national scope of the petitioner's medical research, but stating that the petitioner has not established the importance of her work relative to that of other researchers.

On appeal, the petitioner again submits citation data, along with a table attributed to Thomson Reuters' Essential Science Indicators database, showing that papers in the field of neurosciences have an average citation rate of 17.82 from 1998 to 2008. Counsel notes that the petitioner's total number of citations has climbed to 399, which "demonstrates that [the petitioner's] excellent work

not only has had a significant effect on stroke research in the past, but it also continues to have a wide influence over the current[] state of research in the field."

Lost in this discussion is the documented cessation of the petitioner's active research into stroke and cerebrovascular disorders. The record does, indeed, show that the petitioner participated in highly influential stroke research while at the [redacted] of Hong Kong. It does not follow, however, that because the beneficiary used to be an influential stroke researcher, she will therefore be an influential kidney disease researcher in the future. The petitioner has not submitted any published work resulting from her work at the [redacted], and no evidence that her work relating to kidney disease and dialysis has had any significant influence or impact. [redacted] in his letter, referred repeatedly to unfinished projects and anticipated results, with few references to findings that had already resulted from the petitioner's work.

In the absence of any evidence or persuasive explanation to show how the beneficiary's current work relates to her former work in neurology, the success of the petitioner's former neurological work does not justify a conclusion that the petitioner will enjoy comparable success in what appears to be a significantly different field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.